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Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-01843(E)
1801843

Please recycle

NEPAL: Repeated tenure extensions of transitional justice bodies without much progress, has been frightening victims and national and international communities

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council (UNHRC) to Nepal's two transitional justice bodies. They are the Truth and Reconciliation Commission (TRC) and the Commission for the Investigation of Enforced Disappeared Persons (CIEDP). They were set up in 2015 to investigate conflict-era human rights violations. However, even after 3 years, they have not been able to make much progress and are mired in controversy.

Recently, the Government by ordinance extended their tenures by an additional year. But there is no word on amending the transitional justice legislations in line with the Supreme Court decision of 2015. Until that happens, it cannot be expected that much can be achieved.
Before being extended for over a year, the two transitional justice bodies were seeking political commitment before requesting tenure extensions from the Government. It seems that the TRC and the CIEDP have finally decided to put some pressure on the political parties. They need to amend the flawed legal mandate governing the Commissions and better align legislation with recommendations made by the Supreme Court. This would be a welcoming gesture.

But there are also many issues to be addressed before the transitional bodies become truly functional, as they have not done much more than to collect over 60,000 complaints. They have not been able to close even one case they registered within this period. It mostly speaks to the lack of political will and support from the Government. Among many other factors, current legislation allows the transitional justice bodies to recommend amnesty for serious human rights violations and abuses. In order for the transitional bodies to be effective and victim friendly, the amnesty provision must be removed.

In the last three years, political meddling was visible in the CIEDP. It focused more on legality than justice. This is illustrated by one of its decisions. It sent 400 complaints to the TRC jurisdiction, out of more than 3,000 that it collected. They cited the victims as not 'missing' but 'dead' on the basis of the paperwork. This only demonstrates their irresponsibility, and political motives.

On the other hand, the Commissions attributed their underperformance to lack of relevant Laws. In reality, they could have accomplished much more even in the absence of existing laws. The existing Act has not prevented them from seeking the truth, identifying perpetrators or recommending actions to prosecute the individuals who committed heinous crimes. These Commissions could have used the past three years to create an environment of reconciliation and propose relief packages for victims.

Though extensions have been made repeatedly, much cannot be expected from these Commissions established under faulty Acts. There is no doubt that the transitional justice bodies have been set up to both satisfy the political parties and whitewash their wicked crimes committed during the conflict period. Victims do not believe that it will deliver justice to them.

The TRC and CIEDP had not included the victims in the process. So, they feel abandoned, neglected and cheated. Crimes against humanity, murder, rape and enforced disappearance are serious crimes under International Law, and amnesty is not allowed in such cases. The International Community must not give their support if the laws are not amended in line with the verdict of the Supreme Court.

With continuous extensions but without any meaningful progress, the national and international communities, including the civil society and victims, have doubts. They fear that the transitional justice bodies will never address the human rights violations committed during the conflict period, and bring the process to a logical conclusion. Rather, the international community has already sidelined themselves from the process.

The ALRC respectfully requests the HRC to urge the Government of Nepal to oversee that the transitional justice process is not limited to internal jurisdiction, and is a matter of international concern. Nepal cannot avoid interventions from global humanitarian organisations if it does not conclude the process in a justifiable manner by satisfying the victims. The victims and the international community are closely watching the process.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

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[2 February 2018]

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GE.18-01844(E)
1801844

Please recycle

NEPAL: Lack of robust investigation mechanisms result in continued practice of torture

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council (UNHRC) to the unabated practice of torture in Nepal. In the absence of scientific investigation technology and techniques, the Nepalese police have been routinely making use of torture in order to complete their investigations. While this has been ongoing, the police as an institution and the politicians as policymakers, have been turning blind and deaf to this menace.

The state of Nepal has inherited the decades old Police Force and the Royal Nepalese Army, many of whom fought during the conflict. Moreover, the security forces brought their ambivalent attitudes towards torture and impunity with them into modern Nepal.

The absence of the culture of collecting physical evidence results in the practice of torture, and the Nepal police is passive in collecting physical evidence. The country has the tradition of collecting confessions rather than evidence.

With Nepal's investigation system based on confession, law and order is in a fragile state. Confession comes by force or torture. Due to the lack of criminalization, torture and impunity are rampant. Ultimately, the rule of law situation has been affected.

The most common methods of physical torture reported include beatings using the hands, kicking (which may be while the police are still clad in their boots) and using instruments such as bamboo sticks, plastic pipes and batons. The severity of the torture does not necessarily depend on the instruments were used by the police.

Government officials have failed to recognize, and at times blatantly denied, the existence of the systematic use of torture in the post-conflict period, and downplayed the scale of the problem by characterizing instances of torture as isolated incidents.

As the government of Nepal ratified the CAT convention in 1991, it has an obligation to combat torture in Nepal. According to the Evidence Act 1974, the court would not consider evidence if it is the product of force or torture. After the ratification of the CAT Convention, Nepal enacted a Torture Compensation Act (TCA) 1996. But the TCA is not compatible with the CAT Convention. This law fails to criminalize torture, and simply provides reparation to the victims.

Due to lack of effective remedy and lack of criminalization of torture, victims of torture cannot file an FIR in the police stations. In many instances, the TCA failed to provide reparation to the victims of torture as well. One of the provisions in the TCA is the health check of the accused before arrest and before release. But this provision has been rarely implemented.

While the government has attempted to devolve responsibility for torture to the individual policeman, in reality, it is solely responsible for creating situational forces that shape the characters of the individual policemen. An implicit compact that no one will be prosecuted for the use of torture encourages, or, at the very least, permits the individual policeman to commit torture.

The ALRC respectfully requests the HRC to urge the government of Nepal to take concrete steps to end the practice of torture. This is a golden opportunity for the state to build infrastructure and bring in scientific technology for investigation. More training and resources to the policing institution must be made. Torture only serves to undermine the justice system (both criminal and civil) in Nepal, and this should motivate honest policymakers to take aggressive steps aimed at rooting it out.

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Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by the Association for Progressive Communications, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.18-02118(E)
1802118

Please recycle

Internet Freedoms in the Occupied Palestinian Territory

The Association for Progressive Communications (APC) and 7amleh - The Arab Centre for Social Media Advancement submit this statement ahead of the Human Rights Council 37th session to express our grave concern regarding the crackdown on freedom of expression and infringements on privacy online in Palestine.

Recent years have witnessed a sharp rise in attacks on the right to free speech and privacy online for Palestinian citizens of Israel, and Palestinians in the West Bank and Gaza. Digital rights violations are perpetrated at the hands of all three governments: the Israeli government, the Palestinian Authority (PA) and the de-facto government of Hamas in Gaza. In addition, social media companies, whose policies have called into question their neutrality, are complying with Israel in censoring Palestinian voices. Online platforms, particularly social media platforms, have become a new arena of political confrontation for the conflict as well as a place to discuss internal issues within the Palestinian community. It is crucial that the right to freedom of expression add privacy, as stipulated in UN conventions, are upheld and respected for Palestinians.

Freedom of Expression:

The most basic level of internet freedom in any society is directly linked to access to information, which is imperative to establishing a fair society and an informed citizenry, constituting a key pillar of a democratic society. Access to information is also a fundamental prerequisite for the empowerment of communities through freedom of expression, engaging with civil society and public debates, and advocating for certain causes. Despite the fact that freedom of expression is being compromised throughout various parts of the world, it still remains to be an internationally recognised and guaranteed right. The UN Human Rights Council has affirmed in various resolutions that "the same rights that people have offline must also be protected online" including freedom of expression and the right to privacy, which means freedom from censorship and online surveillance . The systematic crackdown on these rights is particularly pronounced in Palestine against the backdrop of a decades long occupation, where internet freedoms are being compromised at the local, regional and global level with space for online dissent or mobilization increasingly shrinking, paving the way for severe punishment such as torture and imprisonment for their expression online.

Israeli Crackdown on the Use of Social Media Platforms and Access to Internet:

In September 2016, the Israeli Public Justice Minister, Ayelet Shaked, announced that close cooperation between the Israeli government and the social media giant Facebook will take place to tackle "incitement" online. This involved encouraging social media networks to remove all content that Israel deems "incitement". The term incitement has been vaguely defined by Israel, but can include discourse and rhetoric that resists or criticises Israeli policy. Throughout 2017, the head of the cyber unit at Israel's Attorney's Office reported that 85% of the Israeli government's requests to remove content were accepted in stark contrast to 70% in 2016.[1] The cyber unit, operating under the Israeli Ministry of Justice, works in close cooperation with both Facebook and Twitter to censor and remove online content that is perceived as "inciteful". According to Adalah, the Legal Center for Arab Minority Rights, the Unit removed 1,554 cases of online content in 2016, constituting a grave violation to Israeli Basic Law that states "Nothing in the law allows state authorities to censor content based solely on an administrative determination". This censorship undertaken by the state there amounts to an illegal offense.[2]

In addition to the reasons stated above, Israel has also developed a policing system that uses algorithms to develop profiles of what Israel views as a likely suspect for an attack. Through monitoring thousands of accounts, the system searches for words related to the conflict as such Zionist or Jerusalem as well as friends, relatives co-workers or

1Ctech. (2017 29 Dec). Israel Official Reports Increased Cooperation on Removing Content from Social Media.https://www.calcalistech.com/ctech/articles/0,7340,L-3728439,00.html

2Adalah - The Legal Centre for Arab Minority Rights (14 September 2017). "Israel's 'Cyber Unit' operating illegally to censor social media content". https://www.adalah.org/en/content/view/9228

acquaintances of recently killed or imprisoned Palestinians.[3] Rather than identifying suspects based on evidence of planned or committed attacks, the algorithm based system targets suspects based on predictions.[4] As a result, Israel has detained over 200 around 800 Palestinians because of content critical of Israeli policy uploaded online.[5] This constitutes a grave violation to the right to privacy, as outlined in the universal framework of human rights law and specifically in the International Covenant on Civil and Political Rights, which stipulates that "no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence" and affirmed in the UN resolution of 34/7.[6]

Such intrusion into Palestinian private life is facilitated by the fact that Israel controls the entire telecommunications infrastructure used by Palestinian companies and internet service providers. Despite the fact that Palestinians are granted "the right to build and operate separate and independent communication systems and infrastructures including telecommunication networks, a television network and a radio network", under the Oslo Agreements, no independent Palestinian ICT infrastructure has been allowed to develop since due to a number of Israeli restrictions. These include restrictions on the use of frequencies, Israeli control over the import and export of equipment and technology between Palestinian territories and unauthorised Israeli mobile companies operating in Palestinian territories, putting Palestinian operators at a huge disadvantage.[7]

Palestinian Authority Electronic Crimes Law (2017):

Given the antiquated and obsolete nature of the Jordanian Penal Code laws that have continued to be enforced in the West bank since 1967, which fail to address modern infringements such as cyber-crimes, the PA adopted the Electronic Crimes Law through a presidential decree in July 2017. This law is in flagrant violation of Article 19 of the Palestinian Basic Law, which stipulates "Freedom of opinion may not be prejudiced" and Article 27, "Censorship of the media shall be prohibited" in addition to Article 19 of the International Covenant on Civil and Political Rights (ICCPR).[8] Although the law has been passed under the pretext of fighting crimes on the net, such as sextortion, hacking, blackmail, impersonation etc. the law has been drafted in such a manner that curbs freedom of expression, silences political opponents and limits online access. Al Haq, in a letter addressed to the UN Special Rapporteur on Freedom of Opinion and Expression, noted how the law was "*part of efforts to narrow civil, political, and social space*".[9] Just weeks following the formal introduction, five journalists were arrested for writing Facebook posts critical of the PA, whilst there have been no arrests on claims of fraud or sextortion. Moreover, over twelve news and media websites were blocked by the Attorney General in June.[10] raising serious questions about the actual agenda of the new legislation, which is currently being enforced with complete disregard for Palestinian civil society's integration into drafting the law.

3Open Democracy. (4 October 2017). The Israeli Algorithm Criminalising Palestinians for Online Dissent. https://www.opendemocracy.net/north-africa-west-asia/nadim-nashif-marwa-fatafta/israeli-algorithm-criminalizing-palestinians-for-o

4Al Shabaka - The Palestinian Policy Network. (23 October 2017). Surveillence of Palestinians and the Fight for Digital Rights. https://al-shabaka.org/briefs/surveillance-palestinians-fight-digital-rights/

5Haaretz. (31 May 2017). How Israel Jails Palestinians Because They Fit the Terrorist Profile. https://www.haaretz.com/israel-news/.premium.MAGAZINE-israel-jails-palestinians-who-fit-terrorist-profile-1.5477437

6United Nations Human Rights Office of the High Commissioner. The Right to Privacy in the Digital Age. http://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx

77amleh - The Arab Centre for Social Media Advancement. (22 January 2018). Internet Freedoms in Palestine: Mapping of Digital Rights Violations and Threats. (http://7amleh.org/2018/01/22/7amleh-publishes-innovative-research-on-internet-freedoms-in-palestine-mapping-of-digital-rights-violations-and-threats/

8The 2003 Amended Palestinian Basic Law. Ahttps://www.palestinianbasiclaw.org/basic-law/2003-amended-basic-law

9Al Haq. (03 August 2017). Letters Sent to UN Special Rapporteur on Palestine's Cyber Crimes Law. http://www.alhaq.org/advocacy/topics/palestinian-violations/1131-letters-sent-to-un-special-rapporteur-on-palestines-cyber-crimes-law

10Ibid. http://www.alhaq.org/advocacy/topics/palestinian-violations/1131-letters-sent-to-un-special-rapporteur-on-palestines-cyber-crimes-law

We would like to draw the Council's attention to the recent unlawful arrests perpetrated by the PA who arrested human rights defender, Issa Amro, and six journalists who work for Hamas-affiliated news outlets. In the two cases, individuals in question were charged under Article 20 of the new law with "publishing news that would endanger the integrity of the Palestinian state, the public order or the internal or external security." Another striking example is Palestinian journalist Thaher al-Shamali who was arrested by the Preventative Security forces in Ramallah in June 2017. He was charged with "insulting higher authorities and causing strife" with regards to a critical article he published online. He claimed that following his release he was threatened over the phone and warned not "to post opinions critical of the government on Facebook."[11]

CONCLUSIONS:

Through monitoring Palestinian accounts on a mass and intrusive scale, carrying out arbitrary arrests and increasingly relying on partnerships with social media giants, Israel is extending its occupation into the digital sphere. This is exacerbated by the PA's imposition of a police like state in the West Bank through the systematic attack on freedom of expression. It is crucial that Palestinians, a subjugated and oppressed people, have their voices amplified to enrich their contribution to global debate and expose abuses to foster democratic and civic participation. Right to freedom of expression and privacy offer the premises for these enjoyed rights.

RECOMMENDATIONS:

To the Government of Israel:

- Formalise commitment to ensuring transparency and independent oversight on agreements made with social media companies.
- Commit to respecting the right to privacy online in accordance with Article 7 of The Israeli Basic Law for Human Dignity and Liberty (1992).
- Allow the development of an independent Palestinian ICT infrastructure as outlined in the Oslo Agreements.
- Respect and uphold the rights of all Palestinians to freedom of opinion and expression and to privacy under the International Covenant on Civil and Political Rights (ICCPR).

To the Palestinian Authority:

- Ensure commitment in upholding the Palestinian Basic Law, namely Article 19 and Article 27.
- Halt arrests carried out and release those detained on the premise of the Electronic Crimes Law.
- Consider further amendments to the Electronic Crimes Law to ensure its compliance with international standards and norms.

To the Human Rights Council:

- The Human Rights Council and the UN special rapporteurs should continue their monitoring of violations of human rights in the digital sphere and emphasise them in thematic reports, statements, and resolutions.
- Support States, particularly Israel, the PA and Hamas to improve internet policies to ensure that human rights for Palestinians are respected online.

APC is a global organisation and network of members that work to empower and support organisations, social movements and individuals in and through the use of information and communication technologies (ICTs) to advance

11Amnesty International. (23 August 2017). Public Statement: State of Palestine: Alarming attack on Freedom of Expression file:///Users/chloepaterson/Downloads/MDE1569832017ENGLISH.pdf

human rights, social justice, gender equality and sustainable development. APC has 55 organisational members and 30 individual members active in 75 countries, mostly in the global South.

7amleh - The Arab Centre for Social Media Advancement is a Palestinian NGO aimed at enabling Palestinian civil society to effectively utilize tools of digital advocacy through professional capacity building, defending digital rights and building influential digital media campaigns.

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1801845

Please recycle

BANGLADESH-INDIA: Rising energy demand cannot be used for destroying people and their habitats

The Asian Legal Resource Centre (ALRC) wishes to draw attention of the Human Rights Council to massive displacements and damage to habitats caused across Asia for meeting growing energy needs.

A case in point is that of Rampal Power Station in Rampal, Bangladesh. India's National Thermal Power Corporation (NTPC) and Bangladesh's Power Development Board (PDB) are jointly building the coal based thermal power centre. The land for the plant was allocated in December 2010 flouting all norms and without any assessment of its impact on the people and the habitat.

Experts and environmentalists in Bangladesh protested against the decision and highlighted the high environmental risks that the proposed plant would cause. Taking cognizance of the same, the High Court in Bangladesh ruled against the establishment of the plant without assessing the environmental aspects. The Department of Environment (DoE) then rushed to publish an Environmental Impact Assessment (EIA) report declaring the proposed plant as 'environment friendly'. The DoE then made its report public and sought feedback online, again in violation of the rules which stipulate that the report must be published first for feedback and only then can it get approved or disapproved. However, the two governments, of Bangladesh and India, went ahead in utter disregard of the rules and signed a treaty to build the Rampal power plant on 20 April, 2013. The framework agreed in the treaty includes joint initiative, implementation and purchase.

Interestingly, a similar power plant that the NTPC sought to build in the Indian state of Chhattisgarh to produce the same amount, 1,320 megawatt, of electricity was found to be 'highly threatening to environment' by the Green Panel of the India's Ministry of environment and was eventually disapproved.

Further, the EIA report by Bangladesh DoE states that a radius of 10 kilometers from the Sunderbans is considered as Environmentally Critical Area (ECA) and the proposed spot for the plant is 14 kilometers away from the forest, making the plant not risky. However, the findings of independent experts through Geographical Information System (GIS) software put the real distance in-between 9 and 13 kilometers.

Ironically, India's Wild Life Protection Act 1972 prohibits building power generation plants within 15 kilometers radius of wildlife sanctuaries, national parks and other biodiversity rich areas. As an implication of the same, the plant that NTPC has proposed to build near the Sunderbans, a Bangladeshi forestry, would not be allowed if it was in India.

Further, there are significant inconsistencies in the project document over land requirement for the project. The Rampal plant puts the land required at whopping 1,834 acres of land, significantly higher, in fact almost triple the land required for similar projects producing around 1,300 megawatts of electricity built by the NTPC in India. The land here consists of agricultural lands, fisheries and human habitats. Over 95 per cent of the allocated land is highly fertile and capable of sustaining three crops an year. Also, more than 8,000 families are permanent residents of the allocated land and among them 7,500 families live on the mentioned farming and fisheries. Acquisition of the land for the Rampal plant will lead to forced displacement of these people.

The NTPC has often been in conflict with the people even in India and the clashes caused by its land acquisitions have even led to violence and killing of people. One of the most recent example of the same was the police firing on people protesting against acquisition of their lands for a coal mine project of the public sector undertaking in 2016. The firing that killed 4 and injured many in Dadikala Village of Barkagaon Block in Hazaribagh District of Jharkhand was almost a repeat of police firing an year before in which several people were seriously injured.

Because of emitting many dangerous pollutants, including toxic gases and fly ash, coal based thermal power plants are dangerous for the environment in any case. Building them in such close proximity of human habitats in areas with great biodiversity makes them even more dangerous.

Being prone to soot formation in heat exchangers and boilers makes thermal power plants highly prone to accidents, often causing huge damage even to human lives. An example of the same is the boiler explosion in NTPC's Feroze Gandhi Unchahar coal-fired power plant in Raebareli district of Uttar Pradesh in India. The explosion that took place in a recently operationalized unit killed 32 people.

In light of this, the ALRC urges the Council to:

a) Ask the government of Bangladesh to immediately scrap the Rampal Power Station project.

b) Urges the government of Bangladesh to ensure that no such projects are started without an impartial, efficient and transparent assessment of their impacts on the environment and also on the people living in the area where the project will come up.

c) Ask the governments in Asia to evolve a comprehensive policy for dealing with conflicts between development projects and the people getting affected by them. Such a policy must be evolved with serious and genuine consultation with all the stakeholders- including the government agencies, the people and their representatives, members of the civil society, experts, and independent social and human rights bodies.

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Please recycle

SOUTH ASIA: Asia's children on the verge of severe malnourishment

The Asian Legal Resource Centre (ALRC) wishes to draw attention of the Human Rights Council to the massive relapse of severe malnutrition among children in Asia, reversing the advances made over decades.

The relapse is particularly startling in Sri Lanka, a country which has made spectacular achievements in snatching its population away from hunger. The country has not only seen its hunger level stagnating at 25.5 percent in 2017 as it was in 2016; it has also seen a rapid rise in prevalence of wasting among its children. Over the five-year period 2012-2016, the prevalence of wasting in Sri Lankan children under five years has increased to 21.4 percent, as against only 13.3 percent in 2006-2010. The increase is particularly worrying as only four countries in the world have child wasting above 20 percent: India, Djibouti, South Sudan and now Sri Lanka.

Ironically, it seems that the reversal caught the Sri Lankan authorities unaware. As no one saw this coming, no measures were taken to arrest the problem before it got out of hand.

India, always an underperformer and one of the main reasons for the child malnutrition rates being very high, is performing equally worse when it comes to wasting of its children. The National Family Health Survey-4 (2015) shows that high wasting rates are prevalent even in the states that have performed better in reducing child and infant mortality rates in the past decade. It also shows that wasting among children reduced only in 12 Indian states, whereas it increased in 15, including in those doing economically better than many others, such as Maharashtra (9.1%), Karnataka (8.5%), Goa (7.8%), Gujarat (7.7%) and Punjab (6.4%).

In fact, as against other indices of child malnutrition, which have mostly come down in past decades, wasting of children has increased from 17.1 percent in 1998-02 to 21 percent in 2012-16 in India.

Pakistan is performing equally worse, and is in fact the second most undernourished country in Asia. Stunting among children has increased in the country and now stands at 45 percent as against 40.3 percent in 2006.

Similarly, the rank of the Philippines in the Global Hunger Index (GHI) has hardly changed in the last three years. Even worse, it has now slipped further down with a 0.1 percentage point increase, returning to the 'alarming' situation from the 'moderate' category. The current GHI score of the country at 20.0 is higher than 2016's 19.9 and barely lower than 2015's 20.1.

Evidentially, the nutritional status of children in the region is at serious threat across countries. Further, it is so despite gigantic differences among countries in terms of economy, growth and resources. The situation also shows that the economic growth of a country does not necessarily translate into eradication of hunger, particularly for the weaker sections of its citizenry. Sub-national analyses of hunger statistics clearly show how governments around the world have abandoned a section of their population without any visible reduction in their hunger levels.

Sadly, it is not that the governments of these countries do not have resources to eradicate hunger, particularly among children. In fact, the resources required are so small, that even poorer countries can afford them easily as shown by countries like Cambodia, Nepal and Bangladesh. Cambodia's GHI score was a whopping 45.8 in 1992 for instance, but by 2017, Cambodia brought it down to 22.2. Nepal too has similar story; it brought down its hunger index of 42.5 in 1992 to 22.0 in 2017. The numbers for Bangladesh are pegged at 53.6 in 1992, 37.6 in 2000 and 26.5 in 2017. Evidentially, all these countries brought down their hunger levels significantly; in fact, they almost halved them over the decades. They did it against many odds, Cambodia limping back to normalcy after an almost complete collapse during the Pol Pot era, Bangladesh achieving the same despite battling an annual menace of devastating floods, and Nepal doing the same despite its mountainous topography and a catastrophic earthquake.

The United Nations Development Programme's Human Development Reports give an idea of how easily affordable eradicating hunger and malnutrition is. It observed in 2015 for instance, that India can provide for "a basic and modest set of social security guarantees for all citizens with universal pension, basic health care, child benefits and employment schemes" for just 4% of its GDP. As against this, the total budgetary allocation on these heads hardly ever crosses 1% of India's GDP. The pattern, sadly, is same across the countries.

Further, almost all these countries are marred by the menace of nearly defunct public institutions meant to deliver programmes eradicating hunger and malnutrition. The rot in the social welfare institutions of these countries means that almost nothing reaches the poor, lost to vested interests entrenched deep in the system.

It is clear that the only way to eradicate hunger from the region is ensuring adequate funding for the social sector, together with functioning public institutions delivering the benefits to the needy. All forms of pilferage, leaks, and outright loot, due to endemic corruption, has to be weeded out.

In light of this, the ALRC urges the Council to:

a) Ask the governments in Asia to begin nationwide programmes in order to bring all their children under nutritional coverage. The Council must also urge the governments to ensure that the programmes launched to alleviate hunger and malnutrition have universal coverage and are not only for 'targeted' populations.

b) Ask the governments to pay particular attention to the children of marginalized and dispossessed communities, and those hailing from lower castes, classes, and indigenous communities. The council must also ask the governments to investigate discrimination along caste, communal, ethnic, gender and other lines that institutionalize and perpetuate malnutrition, which then reinforces the vicious cycle of wasting-stunting leading to poverty, and poverty leading to even more wasting and stunting among the children of such communities.

c) Ask the governments to invest in public institutions, make them accessible and responsive for the people. The Council must also ask the governments to put a grievance redress mechanism in place for the people to access in case of the institutions malfunctioning.

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Human rights situations that require the Council's attention

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1801851

Please recycle

PAKISTAN: Impunity and disappearances rise hand in hand

The Asian Legal Resource Centre (ALRC) would like to draw the UN Human Rights Council's attention to the practice of enforced disappearances, ongoing in Pakistan for the last many years. The ALRC is concerned about the increase in disappearance cases in Pakistan. The state has utterly and miserably failed to restrain law enforcement agencies, which are indulging in the practice with impunity.

Enforced disappearance is frequently used as a strategy to spread terror within society. The feeling of insecurity and fear it generates is not limited to the close relatives of the disappeared, but also affects communities and society as a whole.

According to the Commission of Inquiry on Enforced Disappearances in Pakistan, during the last six years, the Commission has received 3,740 complaints from different parts of the country. Of these, 121 cases were reported from the national capital, Islamabad; 752 cases were reported from the country's largest province, Punjab; 1, 010 cases were registered from Sindh Province, where the country's largest port city Karachi is located; 276 cases were reported from Baluchistan; and 112 cases from the Federally Administrated Tribal Area (FATA).

Of the total number of complaints received by the Commission, the Commission till July 2017 has stopped from proceeding in 296 cases. This is because the Commission is of the view that these cases were abduction for ransom. According to the Commission's report, the total number of cases processed up to 31 March 2017 is 2,652.

Over 1200 cases of missing persons in Sindh province have been reported since 2010. During 2012-2014, a wave of disappearances targeted numerous Sindhi young men, almost all of whom were political and human rights activists and journalists. In recent months, there has been a resurgence of enforced disappearances throughout Sindh. Since February 2017, more than 160 people have gone missing and their whereabouts remain unknown. Almost all of the eyewitnesses to these disappearances have indicated that the perpetrators seem to be official security personnel – ISI, MI, rangers, and police. The relevant authorities are not ready to register cases against the real culprits. Many of these cases have been registered at the High Court, but the judiciary remains reluctant to make any meaningful progress. Those who raise their voice for the release of missing persons are threatened with dire consequences. An atmosphere of utmost fear and terror has been instigated by the security agencies.

The security agencies' modus-operandi is to abduct, torture, and hold the activists incommunicado for as long as they see fit. Later, the activists are either killed and dumped on the roadsides, or released, but only after they have been brutally tortured and traumatized. Families, friends, and community members are genuinely concerned about the life and welfare of the recently disappeared activists. As the list of missing persons grows, the official security personnel continue to act with impunity. Further, the use of enforced disappearance is in direct contravention of the Declaration on the Protection of all Persons from Enforced Disappearances as well as the Universal Declaration of Human Rights.

At the same time, illegal and arbitrary detention, disappearances, extrajudicial executions, and custodial torture are provided with constitutional protection by the government. This is through the court's and government's application and interpretation of the Pakistan Protection Ordinance (PPO), amendments brought into the Anti-Terrorism Act, 1997, and the formation of military courts for summary trials. The law enforcement agencies have unbridled powers to arrest, detain persons incommunicado, or shoot at sight under these laws. Under the guise of these legislations and powers conferred therein, state agencies routinely detain persons for long periods, even beyond what is provided in these draconian legislations.
The government of Pakistan has so far denied any involvement in the matter. For example, during the third UPR of Pakistan, the government, upon being probed about reported cases of disappearances, categorically denied the existence of any disappearances within Pakistan. This is despite the fact that the Commission of Inquiry on Enforced Disappearances, a State body, has admitted that enforced disappearances are occurring in Pakistan.

The International Commission of Jurists (ICJ) has reported that persons prosecuted by military tribunals are subjected to enforced disappearances, torture, and other ill-treatment. These allegations have not been adequately investigated, giving rise to concerns about convictions based on confessions. The year 2015 saw the execution of 326 people in

Pakistan, many on the basis of such convictions by military courts. According to an ICJ report, military courts have convicted 274 individuals and handed down 161 death sentences.

The government, under strong pressure from the military, is hesitant to criminalize enforced disappearances. At the same time, the armed forces do not allow Pakistan's intelligence agencies to be brought under civilian oversight. They also are not accountable to the parliament. Although the Supreme Court and the Commission of Inquiry on Enforced Disappearances had demanded that there should be a law to regulate the operation of Pakistan's intelligence agencies, successive governments have failed to act on this, due to threats from the armed forces.

In December 2016, the Senate had unanimously adopted half a dozen recommendations, including a draft legislation, to oversee the functioning of intelligence agencies. However, the Senate failed to pursue the matter. The recommendations adopted by the Senate included legislation to criminalize enforced disappearances, bringing state agencies under a law and the ratification of the Convention on Enforced Disappearances.

The European Union has stated that it might review "its economic concessions given to Pakistan over the deteriorating human rights situation, including the wave of abductions (enforced disappearances) of activists reportedly by the security agencies and discriminatory laws against minorities." The European Union has warned Pakistan that there can be no place for enforced disappearances and secret detention in the country; the government must investigate and criminalize the practice, as well as amend its discriminatory laws against minorities.

It is ironic and a failure of the government that until today, not a single perpetrator of the crime of enforced disappearances have been made accountable due to the absence of a law.

Human rights groups claim that not a single day goes by without illegal arrests. Most arrests culminate in disappearances. On 1 September 2016, Balochistan's provincial minister for interior affairs stated that under the Pakistan Protection Ordinance (PPO) more than 13,500 people have been arrested in Balochistan during one and a half years, through the National Action Plan. State officials are unable to provide details or the whereabouts of the "arrested" people. Even the relatives of the victims are unaware of the fate of their family members. More than 150 dead bodies of missing persons, with torture marks on the bodies, were found by the wayside. The Voice of Baloch Missing Persons claims that it has a documented 4300 cases of disappearances from Balochistan within the past 10 years.

Since the beginning of 2017, the state agencies have begun targeting anyone expressing political dissent, including social media activists and bloggers. For instance, Mr. Salman Haider, Professor at Fatima Jinnah University, Islamabad; Waqas Goraya, Netherlands-based; Asim Saeed, of Lahore; Mr. Ahmed Raza Naseer, of Shekhupura, Punjab; and Samar Abbas, resident of Karachi, were disappeared after their arrests in the first ten days of 2017. Except for Samar Abbas, the other bloggers were released due to pressure from the international community and civil society. A case of blasphemy is now pending in the Courts against them.

Not even political activists of mainstream political parties and intellectuals are spared from the fate of disappearances; early this year, three aides of former president Mr. Asif Ali Zardari were picked up by the state agencies. The disappeared aides included Mr. Ghulam Qadir Marri, Mr. Ashfaque Leghari and Mr. Nawaz Leghari. Although they were released a month later from incommunicado detention, the message was conveyed to the political parties by the intelligence agencies that they dare not cross the line.

In light of the above grave situation, the ALRC requests the UN Human Rights Council to press upon the Pakistani government to release all missing persons and produce them in the court of law if they have any charges. The Council should also consider sending a fact finding mission to Pakistan to assess the situation regarding enforced disappearances.

Furthermore, the ALRC recommends that the government of Pakistan:

a. Ratify without delay the International Convention for the Protection of all Persons from Enforced Disappearance without any reservation;

b. Criminalise enforced disappearance under domestic law, in line with international law and standards;

c. Ensure full cooperation by the military and intelligence services with the judiciary and the judicial commission into disappearances, and ensure the full implementation of the commissions' recommendations

d. Ensure the immediate closure of all illegal secret detention centres operated by the security forces and intelligence services; and

e. Ensure civilian oversight of the military and intelligence services.

United Nations A/HRC/37/NGO/89

General Assembly

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English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

PAKISTAN: Rights defenders remain at high risk

The Asian Legal Resource Centre (ALRC) would like to draw the UN Human Rights Council's attention to the rise in violence against Human Rights Defenders in Pakistan. It is unfortunate that human rights defenders, bloggers and social activists have conventionally been considered an irritant to state policies in Pakistan, and are often targeted by the state as well as non-state actors. Fundamentalist groups working under the direct tutelage of the state often use the Damocles sword of blasphemy allegation against all critics of state policies. The judiciary has been reluctant to extend a helping hand to the rights defenders who are assisting other marginalized people. The absence of an efficient and proper criminal justice system is the greatest hurdle in the implementation of the rule of law and international human rights principles.

Pakistan was one of the only 14 out of 193 states to vote against the UN Declaration on Human Rights Defenders, adopted by the General Assembly in 1998. In March 2016, Pakistan lobbied against a UN Human Rights Council resolution which sought greater protection for HRDs working in the fields of economic, social and cultural rights, arguing that 'human rights defenders' were not a special group and did not warrant a special legal status. Pakistan claimed that the recognition and protection of human rights defenders was a conspiracy by Western countries to interfere in the domestic affairs of developing countries.

Due to the worsening climate of fear and intimidation in the country, many activists working for a tolerant, progressive and inclusive Pakistan have been forced into submission or have left the country. Human rights defenders are being increasingly targeted for speaking out. Branded traitors and foreign agents, these agents of change are ostracized and blacklisted.

The disappearance of human right defenders is seldom taken up as a *suo motto* matter by Pakistan's apex courts. The ALRC's sister organization, the Asian Human Rights Commission (AHRC), has documented and reported several cases of disappearances of human rights defenders from all over Pakistan. Many of them have remained disappeared for over a decade. Merely days into 2018, two defenders were reportedly disappeared by the intelligence agencies. One of them was peasant leader and lawyer Mr. Noor Nabi, who was arrested and implicated in seven false cases for fighting the cases of peasants in the courts, as reported by the AHRC in AHRC-UAC-002-2018. A district sessions judge of Okara granted bail in all seven fabricated cases, and when Nabi's friends went to the jail to receive him, they were told that Nabi is not in their custody and he has been released many days ago. Only after a missing case was filed in court, was it revealed that the intelligence agency had taken Nabi from the jail and kept him in their custody, and after the court intervention, he was lodged in Sahiwal jail.

In another case, reported in AHRC-UAC-001-2018, a frontline activist and Chairperson of the Pakistan Fisher Folk Forum (PFF) was abducted and tortured. Mr. Mohammad Ali Shah, along with his three colleagues, was held hostage by subordinates of the Sindh Provincial Minister of Fisheries and Livestock, Muhammad Ali Malkani. As the culprit is a powerful Minister, local police officers refused to file an FIR on the incident. Ordinary citizens have raised their concern, stating that local influential persons are using their political clout to hinder activists standing up for the rights of poor fishermen.

The year 2017 saw a crackdown on intellectuals and the right to freedom of expression. Five human rights activists, who were staunch critics of state policies, were disappeared within a week. All four were proactive on social media against state atrocities, particularly those meted out to the people of Balochistan. Already being a volatile place for journalists, the state is now extending its influence over digital space, the last avenue of free speech.

As the ALRC noted to the Council in its previous submission, bloggers Waqas Goraya and Asim Saeed disappeared on 4 January 2017, while Salman Haider vanished on January 6, and Ahmed Raza Naseer and Samar Abaas on January 7. The five social media activists were said to be running a Facebook page that propagated leftist ideology, which has now been taken over by the Elite Cyber Force of Pakistan.

While all five bloggers were released after three weeks of captivity, their disappearance sent a chilling message to all dissenters to remain silent. Since then, the government of Pakistan has continued to harshly crackdown on dissenters opposing State policies of subjugation and oppression. Sindh Rangers in particular, have adopted a policy of repression to maintain their writ and any dissent is dealt with brutally, resulting in further unrest in the Province. Intellectuals, activists, and academics have been specifically targeted as they represent the voice of the repressed. Instead of curbing fundamentalists and cracking down on terrorist factions, the State is bearing down hard on leftist and secular elements. As the State and its agencies abet hardline religious zealots, academics, journalists, political activists, bloggers and human rights defenders are routinely attacked for writing and commenting on religious extremism and abuses by security forces. Often times, such attacks come in the form of enforced disappearance and extrajudicial killings to silence dissenters.

In light of the above, the ALRC would like to recommend that:

a) The Government of Pakistan, both at the federal and provincial level, and all its agencies, honor commitments to protect the rights of human rights defenders and recognize the importance and legitimacy of their work.

b) The state should instruct law enforcement officials to strictly abide by the law in all their actions throughout Pakistan. When the rights of human rights defenders are violated by state agents, such violations must be promptly investigated with a view to bringing the perpetrators to justice.

c) Steps must also be taken to prevent a recurrence of violence against defenders. Moreover, adequate steps must be taken by the state to protect human rights defenders against abuses by non-state actors.

United Nations A/HRC/37/NGO/90

General Assembly

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7 February 2018

English only

Human Rights Council
Thirty-seventh session
26 February-23 March 2018
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the International Fellowship of Reconciliation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is hereby circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2018]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Colombia - Threats to Human Rights Defenders

Over a year has passed since the signing of the Peace Accords between the Colombian government and the Revolutionary Armed Forces of Colombia (FARC), but the security of human rights defenders in the country is worsening. According to the NGO *Somos Defensores*, there was a 32% increase in murders of human rights defenders from 2016-2017, as cited in the December report by the Verification Mission from the UN to the Security Council. However, the Bogotá think tank IndePaz put the increase as high as 45%,[1] and Frontline Defenders' annual report for 2017 indicates that 30% of all human rights' defenders killed worldwide were Colombian, the single-largest percentage for any country.[2]

FOR's dedicated international observation program in Colombia, FOR Peace Presence, has worked alongside human rights defenders in the country for over 15 years, and throughout this time has accompanied the Peace Community of San José de Apartadó in particular. As recently as December 29, 2017, one of FORPP's field team members witnessed five armed men, allegedly members of the paramilitary successor group 'Gaitanista Self-Defense Forces of Colombia' (AGC), invade the Peace Community's storehouse on the outskirts of its central settlement and attempted to kill Germán Graciano Posso, the legal representative, as well as other community leaders. Peace Community members acting in self-defense were able to immobilize and detain two of the attackers, preventing any major injuries. They then turned the two men into the custody of the Colombian Attorney General's Investigative Unit in the presence of Deputy Minister of the Interior Horacio Guerrera. We were troubled to learn that these two men were released after just 24 hours.

Following the attack, on January 9, heavily armed troops from the AGC were seen in the hamlets of Miramar, La Cristalina, La Linda, and El Mariano.[3] Days before this, AGC members in the neighboring rural district of Saiza stated that they were going to commit a massacre in the Peace Community in retaliation for the capture of two of their men during the December 29 attack. On January 10, Peace Community members learned of a plan to burn down their central settlement, and on January 11, death threats were issued to Gildardo Tuberquia and Mr. Graciano by paramilitaries living in the city of Apartadó. Finally, on January 16, paramilitary gunmen reportedly prevented a member of the Peace Community from bringing his daughter to seek medical attention.[4]

With settlements throughout the San José de Apartadó District, the Peace Community of San José de Apartadó prohibits the presence of armed groups inside its boundaries and upholds the values of nonviolence and non-participation in war. It was founded on principles of international humanitarian law that protect civilians from armed conflict. Since 1997, the Peace Community has had protective precautionary measures from the Inter-American Commission of Human Rights; since 2000, it has had provisional measures from the Inter-American Court of Human Rights.

The attack on the Peace Community is particularly concerning because of the level of protection from international courts, as well as from the whole international community. The embassies of France, Germany, Norway, Belgium, and a representative from the European Union Delegation were all present for the Peace Community's 20th anniversary on March 23, 2017.

- The Peace Community is not the only high-level target. On November 26th, emblematic land reclaimant **Mario Castaño Bravo** was killed in his home in La Larga Tumaradó, collective territory in Chocó. Just 12 days later a second renowned land reclaimant **Hernán Bedoya** was killed in his Chocó home in the collective territory of Pedeguita y Mancilla, despite high level meetings in Bogotá with national and international entities discussing

1 "Asesinatos de Lideres Sociales Aumentaron un 45 por ciento en el 2017" *El Tiempo* http://www.eltiempo.com/colombia/otras-ciudades/asesinatos-de-lideres-sociales-aumentaron-un-45-por-ciento-en-el-2017-168592

2 https://www.frontlinedefenders.org/en/resource-publication/annual-report-human-rights-defenders-risk-2017

3 "Avanza la agresión avalado por la impunidad" http://www.cdpsanjose.org/node/128

4 "Avanza la agresión avalado por la impunidad" http://www.cdpsanjose.org/node/128

the assassination of Mr. Castaño. Both Mr. Castaño and Mr. Bedoya were accompanied by the Ecumenical Commission of Human Rights as well as members of Communities Building Peace in the Territories (CONPAZ), organizations which FOR accompanies.

- Buenaventura: On January 15th, 2017 **Emilsen Manyoma**, another CONPAZ leader, was murdered together with her partner **Joe Javier Rodallega**.[5] On January 27, 2018, emblematic community leader **Temistocles Machado** was assassinated.[6] Mr Machado was a member of the General Strike Committee, which organized the civil strike in Buenaventura in May 2017, shutting down the city for several weeks[7] to demand advances in healthcare, access to water, education, and employment.

These are only a few examples of the systematic assassinations of community leaders and human rights defenders taking place in Colombia since the signing of the Peace Accords with the FARC. In January 2018, 15 leaders have already been killed, meaning a human rights defender was killed every 48 hours. This wave of murders comes in the month following a public statement of concern by the UNHCHR[8] in Colombia regarding homicides of human rights defenders in Colombia.

In San José de Apartadó, Bajo Atrato, Buenaventura and other parts of Colombia, the main suspect behind these attacks are successor groups to paramilitaries, specifically the 'Gaitanista Self-Defense Forces of Colombia' (AGC). The San José de Apartadó district, for example, was the focus of a Risk Report issued by the Regional Ombudsman's office (*Defensoría*) in July 2017. The *Defensoría* concluded that this group seeks to exercise territorial and social control throughout the district in order to enrich themselves from the area's illegal economy, and to benefit from possible future agro-industry and mining projects. This pattern of other illegal armed groups is taking place throughout Colombia, as noted in the Second Verification Mission to the UN in their report to the Security Council in December of 2017.

As the very wave of killings emphasize, to date the Colombian State has proven unable to adequately attend to the problem. Indeed, as well as unable, it may even be the case that it is unwilling to do so. Statements by public officials have been dismissive of the systematicity of the killings and the character of these illegal armed groups (which so many human rights defenders on the ground simply continue to refer to as 'paramilitaries'). The Defense Minister stated publicly on December 16, 2017, that attacks against human rights defenders were largely due to problems between neighbors, romantic difficulties, or drug trafficking.[9] On January 2, just four days after the attack against Mr. Graciano, the Governor of Antioquia, the Department in which San José de Apartadó is located, claimed that there were no paramilitary groups in the district and accused the Peace Community of crying wolf.[10] We fear that these kinds of dismissive comments will embolden groups seeking to carry out further violence against human rights defenders.

It is the responsibility of the State to protect these community leaders and human rights defenders. We strongly urge that exhaustive investigations into the intellectual authors of these crimes be carried out, in particular the successor groups to the AUC paramilitary group demobilized in 2005. Point 3.4 in the Peace Accords with the FARC specifically addresses these successor groups to paramilitarism and has strategies for their dismantlement; we also urge that these commitments be implemented and, if need be, other strategies for their dismantlement be brought forth. If the intellectual authors of these crimes are not brought to justice, it will be difficult to prevent further violence and guarantee non-repetition.

We counsel the UN to:

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5 "Emilsen Manyoma Otra Defensora de Derechos Humanos asesinada" *El Espectador, 170117* https://www.elespectador.com/noticias/judicial/emilsen-manyoma-otra-defensora-de-derechos-humanos-ases-articulo-675257

6 "Asesinan al lider del paro civico en buenaventra, valle, temistocles machado" http://hsbnoticias.com/noticias/judicial/asesinan-al-lider-del-paro-civico-en-buenaventura-valle-temi-386256

7 "Buenaventura Wakes Up" https://zcomm.org/znetarticle/buenaventura-wakes-up/

8 ONU Derechos Humanos expresa preocupación por homicidios, estigmatización y hostigamientos a defensores y defensoras de derechos humanos en Colombia http://www.hchr.org.co/index.php/informacion-publica/comunicados-de-prensa/ano-2017/8855-onu-derechos-humanos-expresa-preocupacion-por-homicidios-estigmatizacion-y-hostigamientos-a-defensores-y-defensoras-de-derechos-humanos-en-colombia

9 Canal 1: "El ministro de Defensa dice que a los líderes los matan por líos de faldas y de vecinos", 16th of December 2017.

10 Gobernación de Antioquia: "Rueda de Prensa Consejo de Seguridad", 2nd January 2018, minute 9:00.

- Continue their efforts to support the Colombian State's ability to strengthen the protect human rights defenders, and to support and monitor the implementation of the Peace Accords between the Colombian Government and the FARC.
- Pay special attention to the implementation of point 3.4 of the Peace Accords, regarding the dismantlement of the paramilitary successor groups.
- Continue to issue public statements rejecting assassinations of human rights defenders and community leaders, as well as other human rights violations.